



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Office of the Secretary of State, Elections Division

☒ **Permanent Rule**
☐ **Emergency Rule**

Effective date of rule:

Permanent Rules

☒ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☐ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: The Cycle 3 Rules of 2007 implement legislation passed by the 2007 Legislature and address a variety of other topics, including voting centers, service and overseas voters, manual recounts, and local multi-county races and measures.

Citation of existing rules affected by this order:

Repealed: WACs 434-250-060, 434-250-340, 434-261-060

Amended: WACs 434-250-030, 434-250-070, 434-250-100, 434-250-310, 434-250-320, 434-250-330, 434-262-105, 434-264-070, 264-100, 434-264-100, 434-335-030, 434-335-190, 434-220-020, 434-220-030, 434-220-040, 434-220-060, 434-220-070, 434-220-080, 434-230-170, 434-253-020, 434-253-025, 434-262-031

Suspended:

Statutory authority for adoption: 29A.04.611

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 07-17-138 on August 20, 2007 (date).

Describe any changes other than editing from proposed to adopted version:

WAC 434-235-020 is clarified to state that if a County Auditor has incomplete residential information for a UOCAVA voter and therefore precincts the voter as living in the precinct that encompasses the County Auditor's Office, the registration is valid only for that primary or election.

WAC 434-250-100(2) states that if a location offers replacement ballots, provisional ballots, or direct recording electronic device voting, it is considered a voting center.

WAC 434-250-100(2)(e) clarifies that if sample ballots are offered in lieu of provisional ballots, the sample ballots must meet provisional ballot requirements.

WAC 434-262-133 states that if a local ballot measure is on the ballot for a multi-county jurisdiction, the County Auditor whose county has the most registered voters in the jurisdiction must combine the final results.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Date adopted: October 1, 2007

NAME (TYPE OR PRINT)
Steve Excell

SIGNATURE

TITLE
Assistant Secretary of State

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 01, 2007
TIME: 9:09 AM

WSR 07-20-074

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	<u>2</u>	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>8</u>	Repealed	<u>2</u>

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	6	Amended	21	Repealed	<u>3</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>6</u>	Amended	<u>31</u>	Repealed	<u>5</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>6</u>	Amended	<u>31</u>	Repealed	<u>5</u>
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-020 Definitions. As used in this chapter:

(1) "Checkbox" means a voter response position on a consolidated ballot that allows a voter (~~((who desires to vote in a partisan primary))~~) to affiliate with a major political party.

(2) "Consolidated ballot" is a single ballot that includes party checkboxes and lists the major political party candidates for partisan office of all major political parties, the candidates for nonpartisan office, and the ballot measures. The candidates for partisan office are listed by party, and each party is separated from the other parties. The candidates for nonpartisan office and the ballot measures are listed at the end of the ballot, after the partisan offices. (~~((In the case of a direct recording electronic device, a consolidated ballot must have a beginning screen which contains a checkbox for the major political parties. After the voter has affiliated with a major party by marking a checkbox, only the party ballot checked by the voter and the nonpartisan ballot shall appear to the voter.))~~)

(3) "Nonpartisan ballot" means a ballot that includes nonpartisan offices listed in RCW 29A.52.231, and ballot measures.

(4) "Party affiliation" means:

(a) For a voter:

(i) On a consolidated ballot, (~~((a voter's selection of a major political party in a manner consistent with the type of voting system used))~~) selecting a party checkbox or voting in the partisan races for candidates of only one political party;

(ii) On physically separate ballots, voting (~~((a major))~~) one political party's ballot;

(b) For a write-in candidate for partisan office, filing as a write-in candidate as a member of a major political party.

(5) "Physically separate ballots" include party ballots for each major political party, and a nonpartisan ballot. Each party ballot lists the candidates for partisan office that have listed that party on the declaration of candidacy, as well as all candidates for the nonpartisan offices and the ballot measures.

(6) "Spot color" means coloring a portion of the ballot.

(7) "Void," when applied to unvoted ballots, means keeping the unvoted ballots in the sealed container in which they were deposited on election day.

WAC 434-220-030 Ballot layout and color--Consolidated ballots. A county may choose to use a combination of both consolidated and physically separate ballots (~~((for poll-site, absentee, and vote by mail ballots))~~). County auditors may use spot coloring, shading, or colored printing to assist the voter in distinguishing between party sections. If color is used, blue must be used for the democratic party (~~((ballot))~~), and red must be used for the republican party (~~((ballot))~~). In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of consolidated ballots:

(1) The party checkboxes must be listed before all offices and ballot measures, pursuant to RCW 29A.36.106. The checkboxes must be labeled "democratic party" and "republican party."

(2) Ballots must list partisan office candidates in columns or sections labeled "democratic party" and "republican party." The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party. If a party section spans multiple columns, the next party section must begin where the last party section ended, and there must be a well-defined division between the party sections. If all parties cannot be listed on the same side of the ballot, there must be a conspicuous explanation that additional parties are listed on the other side of the ballot.

(3) Ballots must list the nonpartisan offices and ballot measures separately in a column or section labeled "nonpartisan offices and measures."

(4) Ballot instructions must be printed on the ballot and include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

~~"This ballot contains ((major political party candidates for the)) partisan offices, ((candidates for the)) nonpartisan offices, and ballot measures. For the partisan offices, you may only vote for candidates of ((only)) one political party. ((Regardless of whether you vote for partisan offices, you may vote for the nonpartisan offices and the ballot measures.))~~

~~1. ((Select one political party. If you do not select a party or if you select more than one party, your votes for partisan offices will **not** be counted. No record will be made of the party you select.)) If you want to vote for democratic candidates, (fill in the box, fill in the oval, connect the arrow, check the box) for the democratic party and vote the democratic section of the ballot. If you want to vote for republican candidates, (fill in the box, fill in the oval, connect the arrow, check the box) for the republican party and vote the republican section of the ballot. There will be no record of which party you select. You may not select both parties or vote for candidates of both parties.~~

2. ~~((Vote only for candidates of that party. Votes for another party's candidates will **not** be counted.~~

3.)) Vote for nonpartisan offices and ballot measures. These votes **will** be counted, even if you do not select a political party."

(5) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered a separate page of the ballot, in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-040 Ballot layout and color--Physically separate ballots. A county may choose to use a combination of both consolidated and physically separate ballots ~~((for poll site, absentee, and vote by mail ballots))~~. County auditors may use colored ballot stock, spot coloring, shading, or colored printing to assist the voter in distinguishing between the ballots. If colored ballot stock is used, blue must be used for the democratic party ballot, and red must be used for the republican party ballot. In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of physically separate ballots:

(1) A separate ballot must be produced for ~~((each major political party and for all nonpartisan races. The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party))~~:

(a) The democratic party;

(b) The republican party; and

(c) The nonpartisan offices and ballot measures.

(2) Each physically separate ballot must have "democratic party," "republican party," or "nonpartisan offices and measures" printed on the ballot. In addition to the requirements of RCW 29A.36.121, each party ballot must list partisan offices first, then all nonpartisan offices and ballot measures. The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party. All ballots must be issued to each voter, both at the poll-site and to voters voting by mail or absentee. ~~((Voters must be instructed to vote and return only one ballot.))~~

(3) Ballot instructions must be printed on the ballot and must include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

~~"((Separate ballots for each political party have been provided, in addition to)) You have been provided a democratic party ballot, a republican party ballot, and a third ballot ((for)) that only lists the nonpartisan offices and ballot measures. Each party ballot lists the candidates of that ((political)) party running for partisan office, as well as the candidates running for nonpartisan office and the ballot measures. The ((ballot labeled)) "nonpartisan offices and measures" ballot only lists the ((candidates running for)) nonpartisan offices and ((the)) ballot measures, ((but)) and does **not** list any partisan offices.~~

~~You may only vote one ballot. ((Your affiliation with a political party is inferred by choosing that party's ballot, but no record will be made of your choice. If you cast more than one party ballot, none of your votes for partisan office will count. If you vote for the nonpartisan offices and ballot measures on a party ballot, return the party ballot only and **not** the separate nonpartisan ballot. Votes for the nonpartisan offices and ballot measures will not be affected by your choice of party ballot.)) There will be no record of which ballot you return.~~

If you want to vote for democratic candidates, vote the democratic ballot. If you want to vote for republican candidates, vote the republican ballot. If you do not want to affiliate with a political party, vote the "nonpartisan offices and measures" ballot.

(4) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered a separate page of the ballot, in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-060 Ballot programming--Consolidated ballots.

(1) Before a county may use a consolidated ballot format, the ballot counting program must achieve the following:

(a) If a voter marks a party checkbox ((for a major political party, only)), partisan office votes for candidates of that party only may be counted, in addition to votes for the nonpartisan offices and ballot measures; ((and))

(b) If a voter marks a party checkbox, partisan office votes for candidates of the other party may not be counted;

(c) If a voter does not mark a party checkbox ((for a major political party, no votes for a partisan office)) but votes in the partisan races for candidates of only one party, the partisan office votes may be counted, in addition to the nonpartisan offices and ballot measures; ((and

~~(c))~~ (d) If a voter does not mark a party checkbox and votes

in the partisan races for candidates of both political parties, no votes for partisan office may be counted but votes for nonpartisan office and ballot measures may be counted;

(e) If a voter marks ((two or more)) both party checkboxes, no votes for ((a)) partisan office may be counted but votes for nonpartisan office and ballot measures may be counted; and

((+d)) (f) In the case of direct recording electronic devices, the voter must be allowed to select one ((ballot)) party on the first screen, and have only the ballot for the party selected appear to the voter.

(2) If an optical scan ballot counting program cannot use the checkbox to eliminate invalid votes for each of the situations listed in this section, all ballots must be inspected for those marks that cannot be read correctly. Improperly marked ballots must be duplicated to ensure invalid votes are not counted. In the case of precinct ballot counters, ballots must be inspected after they have been returned from the polls. As part of the canvassing process, the county auditor must take appropriate steps to amend the unofficial precinct count totals to reflect the correct count.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-070 Polling place procedures--Physically separate ballots. (1) In ~~((the case of optical scan))~~ a county using physically separate ballots, poll workers must give each voter a party ballot for each major political party and a nonpartisan ballot. The county auditor must number the ballot stubs in a manner so that it cannot be determined which ballot was cast by the voter. The poll workers must instruct the voter to choose one ballot to vote. The remaining two ballots must be deposited into an "unvoted ballots" container secured with a numbered seal. The voter may select a single ballot and deposit the other ballots in the "unvoted ballots" container prior to entering the voting booth, or may deposit the unvoted ballots after leaving the voting booth. Regardless of when the ballot selection is made, the poll workers must ensure that only one ballot is deposited in the ballot box and the remaining ballots are deposited into the "unvoted ballots" container. The privacy of the ballot selection by the voter must be maintained. The ballot stub must be removed and placed into the ballot stub envelope before the voted ballot is deposited into the ballot box.

(2) The "unvoted ballots" container must remain sealed and be returned to the county auditor with the supplies and voting materials.

(3) If a voter spoils a ballot and wishes to correct the error, the ballot must be returned to the poll worker and placed into the spoiled ballot envelope. The poll worker must issue a new

set of ballots, consisting of each major political party's ballot and the nonpartisan ballot. The ballot stub number must be recorded in the poll book.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-220-080 No ((records made at poll sites)) record of political party affiliation. Pursuant to RCW 29A.44.231, no record of the political party ((ballot)) selected by the voter may be made. This prohibition includes poll workers, political observers and any other person who may be present while voting or ballot processing is taking place. The use of devices such as telephones, cameras, or recording devices to report, track, or monitor ((the ballot)) a voter's party selection ((by voters)) is prohibited.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-230-170 Ballot form. Each office on the ballot shall be identified, along with a statement designating how many candidates ~~((are to))~~ may be voted on for such office ~~((e.g., vote for, with the words, "one," "two," or a spelled number))~~. The office term shall be included on the ballot if such term is other than a full term (e.g., short/full term, two-year unexpired term, etc.). Each office shall be listed on the ballot in the manner prescribed by law or administrative rule. Following the office designation the names of all candidates for that position shall be listed together with political party designation or abbreviation as certified by the secretary of state as provided in RCW 29A.36.011 or the word "nonpartisan," or "NP" as applicable. When choosing to use abbreviations, the county auditor must provide a legend on each ballot defining all abbreviations. In a partisan primary, candidates shall be listed by political party as provided in chapter 434-220 WAC. Each office listed on the ballot shall be separated by a bold line. In a year in which a President of the United States is to be elected, the names of all candidates for President and Vice-President for each party shall be grouped together with one vote response position for each party, where the voter may indicate his or her choice.

Candidate names shall be printed in a type style and point size which is easily read. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include using a smaller point size, a different type style, or setting the name in upper/lower case letters, rather than upper case, if appropriate.

Each position, with the candidates running for that office, shall be clearly delineated from the following one by a bold line. Following each listing of candidates shall be a blank space for writing in the name of any candidate.

Chapter 434-235 WAC

SERVICE AND OVERSEAS VOTERS

NEW SECTION

WAC 434-235-010 Scope. (1) This chapter implements the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Sec. 1973ff, and the provisions for service and overseas voters in Title 29A RCW.

(2) Uniformed service voter is defined in 42 U.S.C. Sec. 1973ff-6(1) as:

(a) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) A spouse or dependent who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(3) Service voter is defined in RCW 29A.04.163 as any elector of the state of Washington who:

(a) Is a member of the armed forces under 42 U.S.C. Sec. 1973ff-6 while in active service;

(b) Is a student or member of the faculty at a United States military academy;

(c) Is a member of the merchant marine of the United States;

(d) Is a program participant as defined in RCW 40.24.020; or

(e) Is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

(4) Overseas voter is defined in 42 U.S.C. Sec. 1973ff-6(5) as:

(a) An absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(b) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(5) Overseas voter is defined in RCW 29A.04.109 as any elector of the state of Washington outside the territorial limits of the United States or the District of Columbia.

NEW SECTION

WAC 434-235-020 Voter registration. (1) A uniformed, service, or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) An absentee ballot with a valid signature on the return envelope oath.

(2) Pursuant to RCW 29A.40.010, a uniformed, service, or overseas voter does not have to be registered in order to request an absentee ballot. Consequently, a uniformed, service, or overseas voter may request a ballot and be registered after the registration deadlines of RCW 29A.08.140, 29A.08.145, and WAC 434-324-075 have passed.

(a) If the voter is not previously registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system accordingly.

(b) A voter who registers to vote by signing the return envelope of the absentee ballot is not required to provide a driver's license number, Social Security number or other form of identification as outlined in RCW 29A.08.113.

(c) If the county auditor is unable to precinct the voter due to an incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. Upon its return, the ballot must be referred to the county canvassing board. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office. Such registrations are only valid for the primary or election for which the ballot was issued. If the actual precinct is not determined before the next primary or election, the registration must be canceled.

NEW SECTION

WAC 434-235-030 Absentee voting. (1) A uniformed, service, or overseas voter may request or return an absentee ballot by:

- (a) Any manner authorized by WAC 434-250-030;
- (b) A federal post card application issued by the federal voting assistance program; or
- (c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.

(3) The county auditor may issue an absentee ballot by mail, e-mail, fax, or other means as specifically requested by the voter.

(4) If a voters' pamphlet for that primary or election is available, the county auditor must include a voters' pamphlet with the absentee ballot.

(5) If the county auditor is unable to issue an absentee ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the absentee ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(6) Pursuant to RCW 29A.40.150, the secretary of state must furnish envelopes and instructions for absentee ballots issued to uniformed, overseas and service voters. Absentee ballots issued to voters in these categories must be mailed postage-free, and return envelopes must be marked to indicate that they may be returned postage-free. For purposes of RCW 29A.40.150, service voters do not include participants of the address confidentiality program established in chapter 40.24 RCW.

NEW SECTION

WAC 434-235-040 Processing absentee ballots. (1) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of a federal write-in absentee ballot or a special absentee ballot if the intention of the voter can be ascertained.

(2) The absentee ballots referred to in this section must be received prior to certification of the election or primary. The date on the envelope associated with the voter's signature, rather than the postmark on the envelope, determines the validity of the ballot. The signature on the oath must be dated no later than election day. An absentee ballot returned electronically is

invalid until the original is received.

(3) The county auditor must provide statistics on voting by uniformed, service and overseas voters in the certification report required by RCW 29A.60.235 and in response to requests by the federal election assistance commission.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-250-030 Applications. (1) As authorized by RCW 29A.40.040, requests for status as an ongoing absentee voter must be made in writing. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

(a) A space for the voter to print his or her name and the address at which he or she is registered to vote;

(b) The address to which the ballot is to be mailed; and

(c) A space for the voter to sign and date the application.

A voter may request status as an ongoing absentee voter by indicating such on a standard voter registration form.

(2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, or in writing, and may be made by a family member. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

(a) A space for the voter to print his or her name and the address at which he or she is registered to vote;

(b) The address to which the ballot is to be mailed;

(c) A space for the voter to indicate for which election or elections the application is made; and

(d) A space for the voter to sign and date the application.

(3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

(a) A space for an overseas or service voter not registered to vote in Washington to indicate his or her last residential address in Washington; and

(b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible.

The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time and then processed.

(4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as

defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to apply for a single absentee ballot by messenger on election day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.

~~((5) If an application for an absentee ballot is received from a military or overseas voter who is not already registered, and the application does not contain sufficient address information to enable the auditor to issue the correct absentee ballot, the auditor shall contact the person to clarify the application. If, in the judgment of the county auditor, insufficient time exists to correct the application, the auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. Upon its return, the ballot must be referred to the county canvassing board, and the only offices or issues that may be tabulated are those common to the entire county.))~~

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-250-070 Forwarding ballots. (1) If the county auditor chooses not to forward ballots, the ~~((return))~~ envelope must clearly indicate the ballot is not to be forwarded ~~((and return postage is guaranteed))~~.

(2) If the county auditor chooses to forward absentee ballots, as authorized by RCW 29A.40.091, the county auditor must include with the ballot an explanation of qualifications necessary to vote and instructions substantially similar to the following:

If you have changed your permanent residence address, please contact your county auditor to ensure the ballot you receive in future elections contains the races and issues for your residential address. If you have any questions about your eligibility to vote in this election, please contact your county auditor.

The above instructions and the explanation required by RCW 29A.40.091 may be provided on the ballot envelope, on an enclosed insert, or on the ballot itself. Auditors must begin to provide the above instruction to voters no later than January 1, 2008. The county auditor must utilize postal service endorsements that allow:

- (a) The ballots to be forwarded;
- (b) The county auditor to receive from the post office the addresses to which ballots were forwarded; and
- (c) The return of ballots that were not capable of being forwarded.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-250-060

Service and overseas voters.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-250-100 ~~((Depositing of ballots.))~~ Ballot deposit sites and voting centers. ~~((Ballots may be deposited in the auditor's office during normal business hours prior to the day of the election, and from 7:00 a.m. to 8:00 p.m. on the day of the election. Places of deposit))~~ (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

~~((1))~~ (a) ~~((Staffed sites))~~ If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If two or more deposit site staff are persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of ~~((the))~~ their duties. ~~((b) Staffed deposit sites))~~ Staffed deposit sites open on election day must be open from 7:00 a.m. until 8:00 p.m. ~~((on the day of the election and))~~ Staffed deposit sites may be open prior to the election ~~((on))~~ according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board ~~((for consideration of whether special circumstances warrant consideration, as documented by the deposit site staff))~~.

~~((c) A staffed deposit site that only receives ballots is not considered a polling place. A staffed deposit site that both receives and issues ballots is considered a polling place.~~

~~(2) Unstaffed sites may be used if the ballot drop box is either:~~

~~(a) Constructed and secured according to the same requirements as United States Postal Service postal drop boxes; or~~

~~(b) Secured and located indoors))~~ (b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency

to prevent damage and unauthorized access to the ballots.

(2) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be posted according to standard public notice procedures;

(b) Be an accessible location consistent with chapters 29A.16 RCW and 434-257 WAC;

(c) Be marked with signage outside the building indicating the location as a place for voting;

(d) Offer disability access voting;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) Record the name, signature and other relevant information for each voter who votes on a direct recording electronic voting device in such a manner that the ballot cannot be traced back to the voter;

(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;

(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;

(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;

(j) Provide either a voters' pamphlet or sample ballots;

(k) Provide voter registration forms;

(l) Display a HAVA voter information poster;

(m) Display the date of that election;

(n) Provide instructions on how to properly mark the ballot;

(o) Provide election materials in alternative languages if required by the Voting Rights Act; and

(p) Use an accountability form to account for all ballots issued.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened, by whom, and the number of ballots removed. ~~((From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot drop box with sufficient frequency to prevent damage or unauthorized access to the ballots.))~~ Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot ~~((drop))~~ boxes must be emptied or sealed to prevent the deposit of additional ballots.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-250-310 Notice of elections by mail. (1) A jurisdiction requesting that a special election be conducted entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than forty-seven days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing, whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than seventy-nine days before the primary date.

(3) In addition to the information required in the notice of election published pursuant to RCW 29A.52.351 and 29A.52.311, a county auditor conducting an election by mail, including a county auditor that conducts every election by mail, must also state:

(a) The election will be conducted by mail and regular polling places will not be open;

(b) The precincts that are voting by mail if it is only specific precincts rather than the entire county;

(c) The location where voters may obtain replacement ballots;

(d) Return postage is required;

(e) The dates, times and locations of designated deposit sites and ~~((sites for voting devices that are accessible to the visually impaired, including the county auditor's office as a polling place))~~ voting centers.

AMENDATORY SECTION (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

WAC 434-250-320 ~~((Deposit sites.))~~ Ballot deposit sites and voting centers in mail elections. A county auditor conducting a county-wide election entirely by mail must provide at least two ~~((sites for the deposit of ballots. One of the deposit sites))~~ locations to deposit ballots. These locations may be either a ballot deposit site or a voting center, as defined in WAC 434-250-100. At least one location may be at the county auditor's office. All other deposit sites must be at geographical locations that are different from the county auditor's office. ~~((All deposit sites must meet the requirements of WAC 434-250-100.))~~

WAC 434-250-330 County auditor's office as a ((polling place)) voting center. (1) For elections conducted entirely by mail, ~~((services that would have been provided at the polling place must, at a minimum, be provided at the county auditor's office, including provisional ballots. Such services must be provided))~~ the county auditor's office must operate as a voting center beginning the ~~((date))~~ day that ballots are mailed to voters, excluding Saturdays, Sundays, and legal holidays. ~~((identification must be provided in compliance with RCW 29A.44.205 and WAC 434-253-024, except in the case of replacement ballots as authorized by RCW 29A.48.040. If the county auditor does not maintain poll books at the county auditor's office, the voter must sign a record that includes the same information that would have appeared in a poll book. To maintain the secrecy of each voter's ballot, the voter's information must not be recorded in the same order that his or her ballot was cast.))~~

(2) If the persons providing services at the county auditor's office are not employees of the county auditor's office but are persons appointed by the county auditor, the appointees must be representatives of different major political parties and must subscribe to an oath regarding the discharge of duties.

REPEALER

The following section of the Washington Administrative Code
is repealed:

WAC 434-250-340 Manual count of selected precincts.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-253-020 Polling place--Election supplies. Polling places shall be provided, at a minimum, with the following supplies at every election:

(1) Precinct list of registered voters or a poll book, which shall include suitable means to record the signature and address of the voter;

(2) Inspector's poll book;

(3) Required oaths/certificates for inspectors and judges;

(4) Sufficient number of ballots as determined by election officer;

(5) Ballot containers;

(6) United States flag;

(7) Voting instruction signs;

(8) Challenge and provisional ballots and envelopes;

(9) Cancellation cards due to death;

(10) Voting equipment instructions;

(11) Procedure guidelines for inspectors and judges and/or precinct election officer guidebooks;

(12) Keys and/or extra seals;

(13) Pay voucher;

(14) Ballots stub envelope;

(15) Emergency plan of action;

(16) Either sample ballots or voters' pamphlets;

(17) HAVA voter information poster;

(18) A sign listing the date of the election and the hours of voting on election day;

(19) Voter registration forms; and

~~((19))~~ (20) For partisan primaries in counties using physically separate ballots, ~~((and))~~ an "unvoted ballots" container with a numbered seal.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-253-025 Polling place--Items to be posted. The following items must be posted or displayed at each polling place while it is open:

(1) United States flag;

(2) HAVA voter information poster;

(3) A sign listing the date of the election and the hours of

voting on election day;

(4) Voting instructions printed in at least 16 point bold type;

~~((4))~~ (5) Either sample ballots or voters' pamphlets;

~~((5))~~ (6) Voter registration forms;

~~((6))~~ (7) Election materials in alternative languages if so required by the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.); and

~~((7))~~ (8) Any other items the county auditor deems necessary.

REPEALER

The following section of the Washington Administrative Code
is repealed:

WAC 434-261-060

Vote tallying system--A manual
count of random precincts.

AMENDATORY SECTION (Amending WSR 07-02-100, filed 1/3/07, effective 2/3/07)

WAC 434-262-031 Rejection of ballots or parts of ballots.

(1) The disposition of provisional ballots is governed by WAC 434-253-047. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

~~((1))~~ (a) Where two ballots are found folded together, or where a voter has voted more than one ballot;

~~((2))~~ (b) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

~~((3))~~ (c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

~~((4))~~ (d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

~~((5))~~ (e) Where the voter has voted for more candidates for an office than are permissible;

~~((6) Where the voter has incorrectly attempted to correct a vote on the ballot contrary to the instructions provided pursuant to WAC 434-250-040 unless the voter provides written instructions directing how the vote should be counted;~~

~~((7))~~ (f) In the case of a partisan primary((a)), where the voter has voted for a write-in candidate for partisan office who has not filed a write-in declaration of candidacy, thereby affiliating with a major party.

(3) For physically separate ballots in a partisan primary:

~~((i) A log must be kept of all voted ballots rejected and included as part of the county canvassing board minutes.))~~

(a) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.

~~((ii))~~ (b) When a voted nonpartisan ballot and a voted party ballot are both returned, and the nonpartisan section of the party ballot was not voted, the votes from both ballots must be duplicated onto a blank party ballot ((of the same party the voter originally voted for)) and counted.

~~((iii))~~ (c) When a ((party ballot and nonpartisan ballot both have been returned with the nonpartisan offices and ballot measures)) voted nonpartisan ballot and a voted party ballot are

both returned, and nonpartisan races and ballot measures were voted on both ballots, the nonpartisan and ballot measure votes that are the same on each ballot and the ((party)) partisan votes ((shall)) must be duplicated onto a blank party ballot and counted.

~~((iv) Write-in votes for a partisan candidate on a nonpartisan ballot must not be counted in the final write-in tally.~~

~~(v) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy, thereby affiliating with a major party, must not be counted in the final write-in tally.~~

~~(vi) If physically separate ballots are used and a voter returns more than one voted partisan ballot, no votes cast for candidates for partisan office shall be counted. If votes are cast for nonpartisan offices and/or ballot measures on only one of the partisan ballots, the nonpartisan votes must be counted. If votes are cast for nonpartisan offices and/or ballot measures on more than one party ballot, only those votes which are the same on each ballot shall be duplicated onto a nonpartisan ballot and counted.~~

~~(vii) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.~~

~~(b) For consolidated ballots:~~

~~(i) When voting a consolidated ballot, if the voter does not mark the party checkbox, votes cast for candidates for partisan office must not be counted but votes cast on the nonpartisan portion of the ballot shall be counted.~~

~~(ii) Write-in votes for a partisan candidate in a partisan office on the nonpartisan section of the ballot must not be counted in the final write-in tally.~~

~~(iii) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy shall not be counted in the final write-in tally.~~

~~(iv) If the voter marks one party checkbox, only those votes for candidates of that party shall count. Votes cast for candidates of other political parties must not be counted and do not cause over-votes.~~

~~Additionally, the canvassing board shall reject any ballot cast by a voter not qualified to vote, and shall reject absentee ballots where such rejection is required by law or administrative rule. The disposition of provisional ballots is governed by WAC 434-253-047.)~~

(d) When more than one voted party ballot is returned, the partisan votes may not be counted but the nonpartisan and ballot measure votes that are the same on both ballots must be duplicated onto a blank nonpartisan ballot and counted.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-262-105 Audit of results of votes cast on direct recording electronic device. In an audit, the county auditor must compare the paper records with the electronic results cast on the direct recording electronic devices.

(1) The audits required by RCW 29A.60.185 must use the same three races or issues, randomly selected by lot, for every direct recording electronic device subject to the audit and utilized in the election. If there are not three countywide races or issues on the ballot, the county must select the maximum number of contests available but no more than three contests from each of the devices randomly selected for the audit.

(2) Only races and issues with more than ten votes cast on all direct recording electronic devices in the county may be selected for the audit. If the county does not have such a contest, it must not conduct the audit of paper records required by RCW 29A.60.185.

(3) Counties that utilized more than one direct recording electronic device in the primary or election must randomly select the devices until the aggregate total of votes cast in each selected contest is greater than ten. The devices must also be aggregated until the number of devices selected meets the minimum required by RCW 29A.60.185.

(4) Written procedures to perform audits of direct recording electronic devices as outlined in RCW 29A.60.185 and to resolve discrepancies identified in the audit must be promulgated by the county auditor.

(a) The procedures must provide for a process of randomly selecting by lot the direct recording electronic devices that will be audited.

(b) The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(i) A continuous paper record must be utilized (~~((in the audit))~~); the paper record must not be cut into separate individual records; (~~((and))~~)

(ii) If a paper record indicates a ballot has been canceled, that ballot must be exempt from the audit; and

((iii) If the paper records are incomplete, the ballot images stored on the direct recording electronic device must be printed and then compared to the electronic results recorded on the direct recording electronic device.

(5) (~~((The county auditor must compare the paper records with the electronic records. The county auditor may))~~) If there is a discrepancy between the electronic results and the paper record results, the canvassing board must take ((any)) necessary actions to investigate and resolve ((discrepancies)) the discrepancy. The

canvassing board must prepare a public report that outlines the discrepancy and how it was resolved. The results as determined by the canvassing board must replace the electronic results in the official certification.

~~(6) ((Prior to certification, and in time to resolve any discrepancies, the county auditor must alert the county canvassing board of discrepancies identified during the audit.~~

~~(7) Procedures to resolve audit discrepancies must be promulgated by each county canvassing board in accordance with discrepancy guidelines published by the secretary of state.))~~ If there is a discrepancy that cannot be resolved:

(a) The secretary of state must be notified immediately; and

(b) The vendor must be notified and required to provide a satisfactory explanation for the discrepancy within thirty days.

~~((+8+))~~ (7) The aggregate total of paper records counted manually is subject to public disclosure.

NEW SECTION

WAC 434-262-132 Election results for multicounty candidate races. In a candidate race in a multicounty jurisdiction, with the exception of certificates of election issued in accordance with RCW 29A.52.360 and 29A.52.370, the filing officer must collect and combine the certified results from the county canvassing boards in order to issue a certificate of election.

NEW SECTION

WAC 434-262-133 Election results for multicounty local ballot measures. In a local ballot measure election for a multicounty jurisdiction, the county auditor from the county with the greatest number of registered voters in the jurisdiction must combine the final results for that ballot measure from all relevant counties.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-070 Manual recount of votes cast on direct recording electronic devices. In a manual recount, the county auditor must compare the paper records with the electronic results cast on direct recording electronic devices.

(1) Written procedures to perform manual recounts of direct recording electronic devices must be promulgated by the county auditor. The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(a) A continuous paper record must be utilized (~~((in the audit))~~); the paper record must not be cut into separate individual records; (~~and~~)

(b) If a paper record indicates a ballot has been canceled, the ballot must be exempt from the recount; and

(c) If the paper records are incomplete, the ballot images stored on the direct recording electronic device must be printed and then compared to the electronic results recorded on the direct recording electronic device.

(2) (~~((The county auditor must compare the hand recount results with the original results. The county auditor may take any necessary actions to investigate and resolve discrepancies.))~~) If there is a discrepancy between the electronic results and the paper record results, the canvassing board must take necessary action to investigate and resolve the discrepancy. The canvassing board must prepare a public report that outlines the discrepancy and how it was resolved. The results as determined by the canvassing board must replace the electronic results in the official certification.

(3) If there is a discrepancy that cannot be resolved:

(a) The secretary of state must be notified immediately; and

(b) The vendor must be notified and required to provide a satisfactory explanation for the discrepancy within thirty days.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-100 Manual recount--Counting boards. Each county auditor shall establish the number of counting boards to conduct the recount. Each board shall be comprised of no less than (~~((three))~~) two members, made up of:

(1) One representative from each of the two major political parties (~~((and one observer or staff person))~~); or

(2) Two staff persons (~~(and one observer; or~~
~~(3) Three staff persons)~~).

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-335-030 Initial application for certification. Any person or corporation (applicant) owning or representing a voting system or a vote tabulating system, part of a system, equipment, materials or procedure may apply in writing to the secretary of state for certification December 1st and ending June 30th the following year. Certification examinations and hearings are only conducted between January 1st and September 15th of each year.

(1) The application must include, but is not limited to, the following information:

(a) Description of the applicant, business address, customer references, and list of election products.

(b) Description of the equipment under review, version numbers, release numbers, operating and maintenance manuals, training materials, and technical and operational specifications.

(c) Documentation of all other states that have tested, certified and used the equipment in a binding election, and the length of time used in that state. The information for each state must include the version numbers of the operating system, software, and firmware, the dates and jurisdictions, and any reports compiled by state or local governments concerning the performance of the system.

(d) A monetary deposit as described in WAC 434-335-080.

(e) A copy of a letter from the applicant to each independent testing authority (ITA) which:

(i) Directs the ITA to send a copy of the completed ITA qualification report to the secretary of state;

(ii) Authorizes the ITA to discuss testing procedures and findings with the secretary of state; and

(iii) Authorizes the ITA to allow the secretary of state to review all records of any qualification testing conducted on the equipment.

(f) A technical data package (TDP) conforming to the *2002 FEC Federal Voting Systems Standards (FVSS)*, Vol. II, Sec. 2 standards that includes:

(i) Identification of all COTS hardware and software products and communications services used in the operation of the voting system (ref. FVSS, 2.2.1.e);

(ii) A system functionality description (ref. FVSS, 2.3);

(iii) A system security specification (ref. FVSS, 2.6);

(iv) System operations procedures (ref. FVSS, 2.8);

(v) System maintenance procedures (ref. FVSS, 2.9);

(vi) Personnel deployment and training requirements (ref. FVSS, 2.10);

(vii) Configuration management plan (ref. FVSS, 2.11);

(viii) System change notes (if applicable, ref. FVSS, 2.13);
(ix) A system change list, if any, of modifications currently in development; and
(x) A system usability testing report.

(2) The vendor must either file the system executables for the certified system with the National Software Reference Library (NSRL) or place the source code of an electronic voting system ((must be placed)) in escrow ((and)), which must be accessible by the secretary of state under prescribed conditions ((allowing source code review for system verification)).

(3) All documents, or portions of documents, containing proprietary information are not subject to public disclosure. The secretary of state must agree to use proprietary information solely for the purpose of analyzing and testing the system, and to the extent permitted by law, may not use the proprietary information or disclose it to any other person or agency without the prior written consent of the applicant.

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-335-190 Restricted period. No modification, change, or other alteration to voting or vote tabulating system, equipment, or component may be installed in a county between June 15th and November 30th of the same year without permission from the secretary of state. Such permission must be specific to the change and to the county making the change.